

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

2014 JAN 21 P 3:39

FCC - BALD

In the Matter of:

Maritime Communications/Land Mobile, LLC

EB Docket No. 11-71

Application for Modification of Various
Authorizations in the Wireless Radio Services

ORIGINAL

DATE OF HEARING: January 17, 2014 VOLUME: 8

PLACE OF HEARING: WASHINGTON, D.C. PAGES: 984-1073

NEAL R. GROSS & CO., INC.
1323 RHODE ISLAND AVENUE, NW
WASHINGTON, D.C. 20005
TELEPHONE (202) 234-4433

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

IN THE MATTER OF:	:	EB Docket No.
	:	11-71
MARITIME COMMUNICATIONS/	:	
LAND MOBILE, LLC	:	File No.
	:	EB-09-IH-1751
Participant in Auction No. 61:	:	
and Licensee of Various	:	FRN:
Authorizations in the	:	0013587779
Wireless Radio Services	:	
	:	Application
Applicant for Modification of:	:	File Nos.
Various Authorizations in the:	:	0004030479
Wireless Radio Services	:	0004144435
	:	0004193028
Applicant with ENCANA OIL AND:	:	0004193328
GAS (USA), INC.; DUQUESNE	:	0004354053
LIGHT COMPANY, DCP MIDSTREAM,	:	0004309872
LP; JACKSON COUNTY RURAL	:	0004310060
MEMBERSHIP ELECTRIC	:	0004314903
COOPERATIVE; PUGET SOUND	:	0004315013
ENERGY, INC.; ENBRIDGE ENERGY:	:	0004430505
COMPANY, INC.; INTERSTATE	:	0004417199
POWER AND LIGHT COMPANY;	:	0004419431
WISCONSIN POWER AND LIGHT	:	0004422320
COMPANY; DIXIE ELECTRIC	:	0004422329
MEMBERSHIP CORPORATION, INC.;	:	0004507921
ATLAS PIPELINE-MID CONTINENT,	:	0004153701
LLC; and SOUTHERN CALIFORNIA	:	0004526264
REGIONAL RAIL AUTHORITY	:	0004604962
	:	
For Commission Consent to	:	
the Assignment of Various	:	
Authorizations in the	:	
Wireless Radio Services	:	Volume 8

Friday, January 17, 2014

FCC Headquarters
445 12th Street, S.W.
Washington, D.C.

10:30 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

APPEARANCES:On Behalf of Maritime Communications/
Land Mobile, LLC:

BOB KELLER, ESQ.
of: Robert J. Keller, PC
PO Box 33428
Washington, DC 20033
(202) 223-2100

On Behalf of Dixie Electric Membership Corporation,
Inc, and Pinnacle:

ALBERT J. CATALANO, ESQ.
of: Catalano & Plache, PLLC
3221 M Street, NW
Washington, DC 20007
(202) 338-3200

On behalf of Danny Ruhl and Tim Anzenberger:

NICOLE WAID, ESQ.
of: Roetzel & Andress
600 14th Street, NW
Suite 400
Washington, DC 20005
(202) 906-9572

On behalf of Technology Law Group and Neil Ende:

JOHN LONGSTRETH, ESQ.
MARTIN L. STERN, ESQ.
of: K&L Gates LLP
1601 K Street, NW
Washington, DC 20006
(202) 778-9000

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

On behalf of James Chen:

EVELINA J. NORWINSKI, ESQ.
BRETT FARLEY, ESQ.
DANIEL STUART, ESQ.
of: Arnold & Porter LLP
555 12th Street, NW
Washington, DC, 20004
(202) 942-6474

On Behalf of the Enforcement Bureau:

PAMELA S. KANE, Deputy Chief
BRIAN J. CARTER, ESQ.
of: Federal Communications Commission
Enforcement Bureau
Investigations & Hearings Division
445 12th Street, SW
Washington, DC 20554
(202) 418-2393

On behalf of Warren Havens:

WARREN HAVENS, pro se*
2506 Stuart Street
Berkeley, CA 94705
(510) 848-7797

ALSO PRESENT:

AUSTIN RANDAZZO, Federal
Communications Commission,
Attorney-Advisor, Office of
Administrative Law Judges

*Participating via teleconference

P-R-O-C-E-E-D-I-N-G-S

(10:36 a.m.)

1
2
3 JUDGE SIPPEL: Please be seated. Does everybody
4 have a seat? Does anybody care whether the door is open
5 or not? It may be a little bit more comfortable here.

6 Okay, Mr. Havens, are you with us?

7 MR. HAVENS: I am, thank you.

8 JUDGE SIPPEL: Okay. I just want to say good
9 morning. This is a pre-hearing conference in the matter of
10 Maritime Communications, et. al, EB Docket 11-71.

11 There has been some confusion perhaps on --
12 well, it makes no difference on whose part. But this is
13 not a hearing. This is just a conference. There is going
14 to be no testimony taken. Questions will be asked and
15 answers are expected but it is not going to be testimonial.
16 That is point number one.

17 Point number two is I am going to have to take
18 attendance. And let me start the easy way and start with
19 counsel for Maritime.

20 MR. KELLER: Bob Keller here, Your Honor.

21 JUDGE SIPPEL: And on behalf of the Bureau.

22 MS. KANE: Pamela Kane.

23 MR. CARTER: Brian Carter.

24 JUDGE SIPPEL: Mr. Carter, okay. Anybody else
25 in the Bureau?

1 Okay, I'm going to start then. Let me start
2 with counsel for Mr. Ende. I mean all of you are counsel
3 for the Attorneys in this case, I believe.

4 MS. KANE: Correct.

5 JUDGE SIPPEL: Why don't we start with Mr. Ende?

6 MR. LONGSTRETH: Okay. Well, Mr. Ende is here.

7 JUDGE SIPPEL: Mr. Ende, good morning.

8 MR. LONGSTRETH: I'm sorry?

9 MR. ENDE: I'm Neal Ende. I'm managing partner
10 of Technology Law Group.

11 JUDGE SIPPEL: Okay, thank you.

12 MR. LONGSTRETH: And Your Honor, it looks like
13 the convention is that it is okay to sit down while ad-
14 dressing Your Honor.

15 JUDGE SIPPEL: Yes, that's fine. That's cer-
16 tainly fine.

17 MR. LONGSTRETH: And I'm John Longstreth with
18 the law firm of K&L Gates.

19 JUDGE SIPPEL: If I stand up, you have got a
20 problem.

21 (Laughter.)

22 MR. LONGSTRETH: Okay, I got it.

23 JUDGE SIPPEL: Go ahead.

24 MR. LONGSTRETH: Thanks. John Longstreth from
25 the law firm of K&L Gates, representing Mr. Ende and Tech-

1nology Law Group. And then my partner, Martin Stern is
2also here.

3 JUDGE SIPPEL: Okay, I am familiar with your
4letter. All right? I saw your letter.

5 MR. LONGSTRETH: Okay, thank you.

6 JUDGE SIPPEL: Okay, well what about who repre-
7sents Mr. Chen?

8 MS. NORWINSKI: I do, Your Honor.

9 JUDGE SIPPEL: Mr. Chen?

10 MR. CHEN: James Ming Chen --

11 JUDGE SIPPEL: You are here by my direction.

12 (Laughter.)

13 MR. CHEN: Yes.

14 JUDGE SIPPEL: Thank you.

15 MS. NORWINSKI: Your Honor, --

16 JUDGE SIPPEL: Ma'am?

17 MS. NORWINSKI: My name is Evelina Norwinski. I
18am with the law firm of Arnold and Porter. With me are my
19colleagues Dan Stuart and Brett Farley, and we represent
20Mr. Chen.

21 JUDGE SIPPEL: All right. I might lose these
22names a bit. So, please bear with me but I am trying the
23best I can.

24 And who would be the next one?

25 MS. WAID: That would be us, Your Honor. My

1 name is Nicole Wade with Roetzel and Andress and I repre-
2 sent Danny Ruhl and Tim Anzenberger from Copeland and Cook.

3 JUDGE SIPPEL: They are all the way down from
4 Mississippi?

5 MS. WAID: They are.

6 JUDGE SIPPEL: Do you like the weather here?

7 MS. WAID: No.

8 (Laughter.)

9 MS. WAID: Not at all.

10 JUDGE SIPPEL: Wait until you see it gets worse.
11 Does that cover everybody, then? Sir.

12 MR. CATALANO: Al Catalano here for Pinnacle
13 Wireless.

14 JUDGE SIPPEL: Okay. That is fine. You are
15 making an appearance on behalf of Pinnacle.

16 Obviously, I am focusing on the matter at hand
17 but, of course, you can participate as you see fit.

18 Mr. Havens?

19 MR. HAVENS: Yes, sir?

20 JUDGE SIPPEL: Are you being represented by
21 anybody here?

22 MR. HAVENS: What do you mean?

23 JUDGE SIPPEL: Well, I mean do you have a lawyer
24 who is representing you at today's conference.

25 MR. HAVENS: I am attending because I was or-

1dered to attend. But I was not ordered to do anything but
2attend. So, I don't intend to do anything, other than
3attend.

4 JUDGE SIPPEL: Well, are there any lawyers here
5who represent you?

6 MR. HAVENS: That is my answer. I am here to
7attend. But in terms of what attorneys do what for me
8otherwise, that is not an issue under the order.

9 JUDGE SIPPEL: I can try and ask this one more
10time. Are you being represented by counsel today?

11 MR. HAVENS: No.

12 JUDGE SIPPEL: Okay. Okay, now Mr. Chen, you
13are the last one that I have on my time list as still being
14representative -- still representing Mr. Havens. Is that
15correct?

16 MR. CHEN: That is correct.

17 JUDGE SIPPEL: Are you here today in any capac-
18ity to represent him?

19 MR. CHEN: No, I am not.

20 JUDGE SIPPEL: You are not, okay. So then let
21me just focus on that a little bit more. What is the
22nature of your representation? Let me start with the
23nature of it. Well, we'll just go. You two go together.

24 MS. NORWINSKI: Your Honor, if I could interrupt
25for just a minute.

1 JUDGE SIPPEL: Yes.

2 MS. NORWINSKI: It is my understanding that Mr.
3 Havens is asserting a privilege over everything that has
4 not already been disclosed to you in Mr. Chen's Notice of
5 Limited Appearance.

6 We are taking your questions very seriously and
7 would like to be able to answer. But given the assertion
8 of privilege, Mr. Chen has an obligation under Ethics Rules
9 1.6 to honor that privilege until there is a final determi-
10 nation made by an appellate court that the information
11 either is not privileged or needs to be disclosed.

12 I think if I could ask Mr. Havens if he is
13 asserting a privilege over the answer to that question.

14 JUDGE SIPPEL: Well what privilege would you be
15 concerned with?

16 MS. NORWINSKI: It would be attorney-client
17 privilege. Mr. Havens has said in his filings to you that
18 he is asserting attorney-client privilege over all of the
19 responses to the questions that you have indicated you are
20 going to pose in your January 8th order.

21 The other issue here is, in addition to
22 attorney-client privileges, some of this information may be
23 considered secrets by Mr. Havens, which is just confiden-
24 tial information that he does not want opposing counsel to
25 hear. And under Rule 1.6, Mr. Chen, then, is obligated to

1 keep Mr. Havens' confidences and secrets until such time as
2 there is a final order that says he needs to respond.

3 If I can respectfully request, Your Honor, we
4 would like to provide information that Your Honor needs to
5 move forward in this case. If we could do it in an in-
6 camera hearing, where opposing counsel is present, I think
7 there would be a bit more leeway to discuss the privilege
8 and to discuss other information that may not be privileged
9 but that Mr. Havens may want to keep confidential for
10 tactical reasons in these proceedings.

11 JUDGE SIPPEL: Well, in-camera, at this point is
12 not in the cards. That is not on my agenda at all.

13 MS. NORWINSKI: I understand.

14 JUDGE SIPPEL: But let me, Mr. Havens -- well,
15 finish with Mr. Havens.

16 Did you hear the question, Mr. Havens?

17 MR. HAVENS: The question from the --

18 JUDGE SIPPEL: From counsel.

19 MR. HAVENS: I'm sorry, I didn't get the name of
20 the attorney. So, the question the attorney posed to me?

21 JUDGE SIPPEL: State your name again, ma'am, for
22 Mr. Havens.

23 MS. NORWINSKI: Evelina Norwinski from Arnold
24 and Porter. Mr. Havens, I am representing James Chen. And
25 as I understand the question, Your Honor, you are asking

1 Mr. Chen the scope of his representation for Mr. Havens.

2 JUDGE SIPPEL: Correct.

3 MS. NORWINSKI: And Mr. Havens, do you assert
4 the privilege over Mr. Chen's response?

5 MR. HAVENS: Yes, I submitted a motion and a
6 letter on Wednesday. And I had read the Order and I have
7 asserted attorney-client relation and communication privi-
8 leges. So, the answer is yes.

9 JUDGE SIPPEL: I hear your answer. But I am now
10 addressing Ms. Norwinski, her points.

11 My understanding is, and the Commission is going
12 to look for this, I think, they want a specific question
13 asked. And refusal of answer, based on a privilege, and
14 then I rule on that so that the Commission has a record to
15 decide whether or not the privilege is appropriately as-
16 serted or not. They can't take this up on a blank slate.

17 And you are nodding that you understand that.

18 MS. NORWINSKI: That's correct.

19 JUDGE SIPPEL: You are kind of leaving me in a
20 bind here. I intend to ask questions, specific questions.
21 But I don't intend to go into matters which are attorney-
22 client. I understand that. The attorney-client privilege
23 has to do with a communication for purposes of obtaining
24 legal assistance or legal advice. And I am not asking
25 that.

1 I am simply asking who, or in Mr. Chen's case,
2 what was the scope of his engagement. What was he supposed
3 to do for, I will start with Mr. Havens. And I think that
4 certainly I am entitled to an answer to that.

5 MS. NORWINSKI: Your Honor, as Mr. Havens said,
6 he has asserted privilege over the answer. I believe there
7 is a colorable claim of privilege here as to what Mr. Chen
8 was assisting Mr. Havens with.

9 Mr. Chen has disclosed in his limited appearance
10 the dates with which he was working with Mr. Havens. And
11 also that he was assisting Mr. Havens in this particular
12 matter.

13 Beyond that, Mr. Havens has asserted privilege.
14 I believe there is a colorable claim of privilege here.

15 Mr. Chen and I can't make the determination,
16 ethically, as to how far the privilege goes, in these gray
17 areas what might be privilege what might not be privileged.

18 In an in-camera proceeding, I think we could
19 discuss a little more why some of this information might be
20 privileged. But in doing so, I think we are going to
21 disadvantage Mr. Havens in front of opposing counsel in
22 this matter, by discussing why the scope of Mr. Chen's
23 assistance to Mr. Havens, and in particular what issues Mr.
24 Chen worked on might be privileged.

25 So, we will proceed anyway, Your Honor. I

1 appreciate the difficulty of this and, believe me, we have
2 spent many, many hours discussing this internally, in an
3 effort to be helpful to Your Honor, while still honoring
4 Mr. Chen's ethical obligations and his obligations to --
5 his attorney-client privilege obligations to Mr. Havens.

6 JUDGE SIPPEL: Who is paying his fees?

7 MS. NORWINSKI: Who is paying whose fees?

8 JUDGE SIPPEL: Paying Mr. Chen's fees for these
9 hours of work that you are doing.

10 MS. NORWINSKI: No one is paying Mr. Chen's fees
11 for these hours of work.

12 JUDGE SIPPEL: You are doing this pro bono?

13 MS. NORWINSKI: Are you asking who is paying my
14 fees?

15 JUDGE SIPPEL: Yes, sir -- ma'am. I'm sorry.

16 (Laughter.)

17 MS. NORWINSKI: I've been called worse. That's
18 absolutely fine, Your Honor.

19 JUDGE SIPPEL: Okay.

20 MS. NORWINSKI: Your Honor, Arnold and Porter is
21 doing this on an accommodation basis for Mr. Chen. So,
22 there are no fees in this matter.

23 JUDGE SIPPEL: Okay, very good.

24 Now, I must have somehow or other fallen asleep
25 in ethics class or something when it comes to the privi-

1lege. I don't know any other way to read cases, other than
2the fact that there has been a question asked that appears
3to be -- that counsel objects to on the basis of the privi-
4lege or whether it is only the client that can assert the
5privilege. And there is a ruling on it. I don't know any
6colorable right cases. Do you have one, colorable right
7for an attorney-client privilege?

8 MS. NORWINSKI: Are you asking me --

9 JUDGE SIPPEL: Yes, ma'am.

10 MS. NORWINSKI: -- how the information that you
11are asking for is privileged?

12 JUDGE SIPPEL: No, I am asking you if there is
13such a thing as a colorable right privilege. I know that
14there is an attorney-client privilege but what are we
15coloring here?

16 MS. NORWINSKI: Your Honor, maybe I misspoke but
17I said that there was a colorable argument that there is an
18attorney-client --

19 JUDGE SIPPEL: No, you didn't misspeak. You
20didn't misspeak. I am mishearing.

21 MS. NORWINSKI: Okay.

22 JUDGE SIPPEL: That's okay. I didn't mean to
23interrupt. Go ahead. Please explain it to me, though.

24 MS. NORWINSKI: Your Honor, Mr. Havens has
25asserted privilege over what Mr. Chen would say in response

1to your question. I believe that Mr. Havens' claim of
2privilege is credible here. And if this -- you might feel
3differently. The full Commission might feel differently
4but we believe it is a credible assertion of privilege.
5Given that, Mr. Chen is not at liberty then to answer your
6question, we believe, until Mr. Havens has exhausted all of
7his rights of appeal on this issue of privilege.

8 We are getting this from Rule 1.6. There is a
9Note 28 in Rule 1.6. And Note 28, Your Honor, says that an
10attorney may reveal confidences of a client under court
11order but that a lawyer ordered by a court to disclose
12client confidences or secrets should not comply with the
13order until the lawyer has personally made every reasonable
14effort to appeal the order or has notified the client of
15the order and given the client the opportunity to challenge
16it.

17 As Mr. Havens has stated in his filings, he has
18already sought interlocutory appeal of Your Honor's direc-
19tion to these counsel to answer questions because he be-
20lieves all this information is privileged. And I expect we
21have not heard the end of Mr. Havens' appeals on this
22matter.

23 JUDGE SIPPEL: But you know that I mean issue
24has to be drawn before you can file an appeal. This is
25what is driving me crazy here. You say confidences or

1 secrets or the possibility of disclosing confidences or
2 secrets but those are the magic words that you use. There
3 are no questions that are going to be asked about a confi-
4 dence or a secret. We are only asking about scope of
5 engagement. Good Lord, that is a common -- in fact that
6 question has to be asked before you can even determine
7 whether there is -- to make a ruling on an attorney-client
8 privilege. I have to know what the scope of the engagement
9 is.

10 MS. NORWINSKI: And Your Honor, I can say, as
11 Mr. Chen has said in his Notice of Limited Appearance, that
12 the scope of his engagement began in November of 2012 and
13 continues today.

14 JUDGE SIPPEL: In 2012? November, 2012.

15 MS. NORWINSKI: Correct, prior to the time he
16 entered an appearance in this case. And that he has ad-
17 vised Mr. Havens, with respect to this particular matter,
18 with respect to 11-71.

19 Beyond that, Mr. Havens says that any informa-
20 tion Mr. Chen might disclose he considers privileged.

21 I understand where you are coming from, Your
22 Honor, that you believe that the question you are asking
23 and the response is not privileged. I think that that is
24 where there is a debatable issue about whether this is
25 privileged or not.

1 Again, if we were in-camera, I believe we could
2 explain a little bit more about why this might either be --
3 the answer might be privileged or the answer might be
4 considered secret under the definition of secret in Rule
5 1.6. And a secret is information -- I don't mean to inter-
6 rupt you.

7 JUDGE SIPPEL: No, go right ahead, please. I
8 want to hear it.

9 MS. NORWINSKI: Okay. A secret is information
10 that either the client wants to be held inviolate or the
11 disclosure of which could disadvantage the client.

12 And again, I can't tell you how that might
13 disadvantage the client because merely by telling you, I am
14 giving indications to Mr. Havens' adversaries in this
15 matter.

16 JUDGE SIPPEL: Well, they are not going to pay
17 attention to that.

18 (Laughter.)

19 JUDGE SIPPEL: Now, you say the disclosure of
20 the scope of his engagement could somehow or other disad-
21 vantage him in some way?

22 MS. NORWINSKI: Mr. Havens in some way, yes.

23 JUDGE SIPPEL: All right, Mr. Havens.

24 MS. NORWINSKI: Yes, not Mr. Chen.

25 JUDGE SIPPEL: Not Mr. Chen but Mr. Havens.

1 MS. NORWINSKI: Correct.

2 JUDGE SIPPEL: So, Mr. Chen doesn't care about
3 disclosing the scope of the engagement. He is not worried
4 about what he was doing.

5 MS. NORWINSKI: No, he is not. And I can make a
6 representation to Your Honor that we don't believe there
7 has been any inappropriate conduct by Mr. Chen here but we
8 are in a position of not being able to fully explain to you
9 all of the circumstances because of Mr. Havens' claim of
10 privilege and now Mr. Chen's ethical obligation to maintain
11 the confidences of Mr. Havens.

12 I sense frustration and we are as frustrated as
13 you, Your Honor. Mr. Longstreth's letter to you suggested
14 a couple of ways forward and we do believe that either
15 letting this privilege issue go to the full Commission or
16 perhaps an in-camera hearing with Mr. Havens the attorneys
17 that are here today could go a long ways toward progressing
18 on this issue, which is a bit of a side issue to the sub-
19 stance of this matter.

20 JUDGE SIPPEL: Well okay, I am satisfied now
21 that Mr. Chen was not representing in connection with gun
22 running or something like that where he could get in trou-
23 ble.

24 (Laughter.)

25 JUDGE SIPPEL: But what good is it going to do

1 the Commission to send that information up to it? What
2 more are you going to tell the Commission -- is Mr. Havens
3 going tell the Commission that they are not going to tell
4 me -- he is not going to tell me in a public context? The
5 Commission isn't going to meet with you in-camera.

6 MS. NORWINSKI: Your Honor, is there a possibil-
7 ity for us to submit filings under seal with the Commis-
8 sion?

9 JUDGE SIPPEL: Filings under seal? Well, there
10 is such a procedure but there has to be some purpose to do
11 that. I mean, you can always file anything you want in an
12 envelope and seal it up and file it.

13 MS. NORWINSKI: Yes, and the purpose is that
14 once the information that would lead to a meaningful deci-
15 sion on privilege is in the public domain, it is out of the
16 bag and the harm has been done already.

17 JUDGE SIPPEL: Even the information about the
18 scope of the engagement?

19 MS. NORWINSKI: Your Honor, we are in a diffi-
20 cult situation here because Mr. Havens is claiming that
21 this is privileged or the information could be detrimental
22 to him. And ethically, we are bound to comply with that
23 until we get an order from a higher court.

24 And we have given a lot of thought to how best
25 to proceed with this so that we can get to -- we can give

1 information to you that will help you in your proceedings.
2 And again, we would ask for an in-camera proceeding. I
3 think it will allow us to give you a little more informa-
4 tion as to why this is either privileged or potentially
5 harmful to Mr. Havens' interest here.

6 JUDGE SIPPEL: The only potential -- the only
7 damage to Mr. Havens' interest that I can see by disclosing
8 that information is that he might lose the assertion of the
9 privilege. He might lose -- a ruling denying the assertion
10 of the privilege. That is the only thing that could possi-
11 bly be at risk. There is not any information I am asking
12 for. Hello!

13 Let me review -- let me go down to some basics.
14 Just let me review to you the key elements of asserting the
15 attorney-client privilege.

16 There has to be the existence of an attorney-
17 client relationship. So, that is admitted. He admits that
18 relationship.

19 MS. NORWINSKI: Correct.

20 JUDGE SIPPEL: There has to be a communication
21 from the client to his or her attorney. That exists. That
22 means Mr. Havens and Mr. Chen. And we are not asking
23 anything about that. The communication is legally related,
24 i.e., it is for the purpose of obtaining legal advice and
25 there is an expectation of confidentiality.

1 So, all those elements are there. But he won't
2 admit to or you are unable to disclose exactly what the
3 client relationship was, which is the first thing that I
4 have to determine under that setting.

5 MS. NORWINSKI: Yes and Your Honor, as has been
6 disclosed, Mr. Chen did have an attorney-client relation-
7 ship with Mr. Havens beginning in November of 2012, advis-
8 ing him on issues in this particular matter.

9 JUDGE SIPPEL: Is that the scope of his repre-
10 sentation?

11 MS. NORWINSKI: Yes, I would say that is the
12 scope of his representation. Now beyond that, the particu-
13 lars of what advised on and when, we don't want to get
14 into. So if that answer --

15 JUDGE SIPPEL: I'm not asking that.

16 MS. NORWINSKI: Okay.

17 JUDGE SIPPEL: I am not asking what he advised
18 him. Yes, I have questions on what he advised on. That is
19 only the subject matter of the advice. I am not asking
20 what advice he gave or he has given or what disclosures
21 were made by the client in order to initiate that advice.

22 And again, we are back to square one now. You
23 are really not letting me do my job.

24 MS. NORWINSKI: I'm sorry, Your Honor. This is
25 -- we are trying to be helpful here but feel very con-

1strained by the ethical rules and Mr. Havens' assertion of
2the privilege.

3 If what you are after by your question what is
4the scope of his representation, I can say --

5 (Simultaneous speaking.)

6 MS. NORWINSKI: Yes.

7 JUDGE SIPPEL: Oh, I have that now. But I am
8going a little -- I want to go a step further and I want to
9ask him with respect to a particular document that is
10admittedly was constructed in part or at least was advised
11in part by Mr. Chen just what aspect he participated in.
12That's all. Not to get anything into advice.

13 And you are saying that that is going to somehow
14-- now the cat's out of the bag. He represents the man and
15we know that it is not anything nefarious and yet we can't
16go any further with this because of the possibility that
17some damage is going to be done to Mr. Havens.

18 You haven't convinced me and I guess maybe it
19doesn't matter if you convinced me or not. This is the way
20it is going to be.

21 MS. NORWINSKI: Yes, Your Honor, given Mr.
22Havens' assertion of the privilege. And if you were to ask
23anyone in this room whether the answer we would give you as
24to specifically what Mr. Chen worked on was privileged or
25not, you might come up with different answers. But it is

1 not my decision as to whether Mr. Chen helped with certain
2 filings. That is up to you to decide. It is also up to
3 the Commission to decide. We can't break the privilege or
4 violate the privileged under Rule 1.6 until we get a final
5 order in this proceeding as to what is or is not privi-
6 leged.

7 We have to abide by Mr. Havens' claim of privi-
8 lege at this point, which, as I said, there is a colorable
9 argument for privilege which we would be happy to discuss
10 further with you in-camera but I don't believe we can
11 discuss it with full participation here in this hearing.

12 JUDGE SIPPEL: You can see the color but nobody
13 else can see the color into you go in-camera and explain
14 what the color is.

15 MS. NORWINSKI: I believe that is right, Your
16 Honor. And again --

17 JUDGE SIPPEL: That is not very artful but that
18 is basically what it is.

19 MS. NORWINSKI: Yes. And again, I apologize for
20 the frustration of this. As I said, we have spent many,
21 many hours trying to work through this and navigate the
22 shoals of the conflicting orders and obligations that Mr.
23 Chen is under here.

24 JUDGE SIPPEL: Well, let me ask you this. This
25 is hours of anguish and careful thinking, et cetera, et

1 cetera. Was Mr. Havens involved in that program?

2 MS. NORWINSKI: No, he was not.

3 JUDGE SIPPEL: Just you and Mr. Chen?

4 MS. NORWINSKI: Yes and --

5 JUDGE SIPPEL: And Mr. Chen was able to -- yes,
6 over there?

7 MS. NORWINSKI: We have also conferred -- I have
8 also conferred with counsel for the other attorneys.

9 JUDGE SIPPEL: Well, that would make sense.

10 MR. LONGSTRETH: And I guess the other thing I
11 would say is with respect to Mr. Havens --

12 JUDGE SIPPEL: This is -- who is speaking now?

13 MR. LONGSTRETH: I'm sorry. This is John
14 Longstreth for --

15 MR. KELLER: From K&L Gates, for Mr. Ende.

16 MR. LONGSTRETH: Yes, for Mr. Ende.

17 And I don't want to break in but --

18 JUDGE SIPPEL: No, go ahead.

19 MR. LONGSTRETH: With respect to the question if
20 what Your Honor is concerned about is do we have an under-
21 standing of the scope of Mr. Havens' assertions, I think we
22 do have an understanding of the scope of Mr. Havens' asser-
23 tions. He has not been shy about letting anyone know.

24 MS. NORWINSKI: Yes.

25 JUDGE SIPPEL: Well, wait a minute. How did